JUN 30 1969
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1969

No. 302

PAUL BROWN MAYNARD,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. _____

PAUL BROWN MAYNARD,
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vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, affirming the judgment of the United States District Court for the Central District of California, convicting the petitioner for a violation of the Universal Training and Service Act and sentencing him to the custody of the Attorney General.

1. OPINION OF THE COURT BELOW

The opinion of the United States Court of Appeals is not yet reported. It is set forth as Appendix A to this petition.

2. STATUTORY PROVISION SUSTAINING JURISDICTION

The judgment of the Court of Appeals was entered on March 28, 1969; Petition for Rehearing denied May 1, 1969. See Appendix B to this petition.[1]

The Petition for Writ of Certiorari is filed within the required thirty days times, as extended by Mr. Justice Douglas to and including June 30, 1969. See Appendix C to this petition.

The jurisdiction of this Court rests on Section 1254 (1) of the Judicial Code, 28 U.S.C. The District Court had jurisdiction under 18 U.S.C. § 3231.

3. QUESTIONS PRESENTED AND HOW RAISED

(1) The constitutional question raised by petitioner is whether petitioner was deprived of that guaranty of "due process of law" insured by the Fifth Amendment and which requires observance of those general rules established in our system of jurisprudence for the security of private rights in any proceeding which may result in depriving a person of life, liberty or property, when the standards used by the Department of Justice Hearing Officer for his Report and Recommendation and relied upon by the Selective Service System, were artificial, fictitious, and unlawful standards not authorized by the Act and the Selective Service System Regulations.

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1. This petitioner's Petition for Rehearing was denied by the Court of Appeals on May 1, 1969. See Appendix B of this petition.

Further, whether the standard established by the Court of Appeals, in petitioner's case concerning conscientious objector, is contrary to the 1st Amendment.

(2) The second question presented is whether a Selective Service System registrant, presenting a prima facie claim for a conscientious objector classification and being entitled to defend a prosecution for failure to submit to induction on the basis that he was misclassified was contrary to all evidence before the Selective Service System, given the prescribed protection.

These questions were raised at the trial and to the Court of Appeals and considered by it.

4. STATUTES AND REGULATIONS INVOLVED

Involved are the Fifth Amendment, the First Amendment, and § 456 (j) of the Universal Military Training and Service Act of 1951 as amended (50 U.S.C.A. App.). They are set forth in Appendix D.

5. STATEMENT OF THE CASE

The indictment charged petitioner with a violation of the Universal Military Training and Service Act for refusing to submit to induction [Tr. 2].[2]

Petitioner pleaded "not guilty" and was tried by the Honorable William P. Gray, District Judge, sitting alone without a jury. Petitioner was found guilty and sentenced to imprisonment for a period of three years [Tr. 28].

6. FACTS

The relevant facts in this appeal are found in (1) the Selective Service file [Ex. 1-122][3] and in (2) the report-

2. Tr. refers to the Transcript of Record.

3. Ex. refers to the Government Exhibit #1, the complete SSS file of Appellant.

er's transcript of the trial [RT 1-15],[4] both being parts of the designated record on appeal.

The appellant is one of Jehovah's Witnesses and at the earliest time in his Selective Service processing (his Classification Questionnaire, 1964) he claimed a conscientious objector classification [Ex. 10],

He also pointed out, at the same time and on the same page, that he was a minister of the Watchtower Bible and Tract Society.

When he filed the above questionnaire it was accompanied by a letter from the Presiding Minister of the congregation of missionaries with which appellant had been affiliated in the years 1953-1957 [Ex. 5]. This letter said "He at all times [1953-1957] manifested sincerity in his devotion to his Christian activiey." [sic].

At this time he also filed a letter from the Overseer of his current congregation of missionaries [Ex. 6]. This letter showed in some detail his ministry work and that it was regular.

The local board sent him a four page Special Form for Conscientious Objector. He filled it out in detail and filed it on April 14, 1964 [Ex. 17-21]. In it he showed he met all the requirements of the act and the regulations. Concurrently, he filed several more corroborative letters from fellow ministers [Ex. 21-24].

Nevertheless he was classified in Class I-A. When he neither asked for an Appearance Before the Board, or for an appeal the board called him in for an "interview". He explained he had heard it was futile.

When he was eventually sent an order to report for induction, and he refused to submit to induction [at the

4. RT refers to the reporter's transcript.

induction station he wrote the following statement, upon request of the induction officer]: "I refused to Jion the Army because. I have been raised as a Jehovah's Witness since I was 5 years old. And the bible says that God's Kingdom is no part of this world. I do not want to kill one of my brothers in war when we are supposte to be brothers in the faith." When the Director learned of the situation [files are sent him for review, before prosecution] he took an appeal for appellant [Ex. 41].

The administrative appellate proceedings, at that time, still included an inquiry by the F.B.I., a hearing by a Department of Justice Hearing Officer, an analysis of all up to that point by the Attorney General's conscientious objector section and a submission of the analysis, with a recommendation, to the State Appeal Board. The registrant was furnished a "resume" of the inquiry (for use at the Hearing) and a copy of the analysis and recommendation of the Attorney General, for a written rebuttal and the appeal board.

The inquiry resume is on pages 62-69 of the government's exhibit. The analysis-recommendation is on pages 57-61 of the same exhibit. The rebuttal of the registrant is on page 70.

1. The inquiry resume: in high school he "was rated satisfactory in cooperation and courtesy"; . . . "been the cause of disciplining problems in class." [Ex. 63]. A "teacher observed that the registrant had always appeared to be sincere and conscientious, and thus, he would be inclined to believe that if registrant claimed to be conscientiously opposed to serving in the military forces because of his religion, he would believe him." [Ex. 63-64].

2. The analysis-recommendation: the Hearing Officer "reported that the registrant [1] did not appear to

have a sound, firm understanding of his religion; [2] that the registrant's reaction to certain situations was opposite to that of a pacifist and his answers seemed to be inconsistent with pacifist views; [3] that the registrant referred only to the very basic tenets of his religion and [4] did not appear to have the knowledge of his religion that would enable him to be classified as a minister." [Ex. 59].

The recommendation was that there were inconsistencies and therefore that an adverse decision would have a basis in fact. The decision of the Appeal Board was adverse to the claim.

3. The rebuttal: the registrant pointed out (1) that the Hearing Officer asked him only two questions on the Bible and (2) that Jehovah's Witnesses are not pacifists. He gave details of his history to show the inaccuracy of the inquiry and analysis [Ex. 70].

7. REASONS FOR GRANTING A WRIT

Both questions presented are of an importance greater than one individual's fate. The questions are national ones because the reach of the Selective Service System is into every hamlet, the "calls" for induction show every indication of continuing, and the percentage of registrants professing conscientious objections to war is not decreasing, therefore numerically many persons are affected.

The constitutional point is of grave importance and the wide impact of the other point requires a national determination.

8. ARGUMENT

The argument is being divided into two parts:

(1) A prima facie case for a I-O classification was presented, and

(2) There exists a constitutional point.

(1) The Prima Facie Case

Petitioner presented to the Selective Service System a prima facie case for a I-O conscientious objector classification and he should have been so classified.

Section 6 (j) of Title 1 of the Universal Military Training and Service Act, as amended (50 U.S.C. App. 456 (j)), provides:

> "Nothing contained in this title . . . shall be construed to require that any person be subject to combatant training and service in the armed forces of the United States, who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. . . ."

Section 1622.14 (A) of the Selective Service Regulations [32 C.F.R. 1622.14 (A)] provides:

> "1622.14 Class I-O: Conscientious Objector Available for Civilian Work, Contributing to the Maintenance of the National Health, Safety or Interest.—(A) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces."

The local board's duties and the courts' scope of review in draft cases were spelled out by this Court in *Dickinson* v. *United States*, 74 S. Ct. 152, 157, 158, 346 U.S. 389 (1953):

> "The task of the courts in cases such as this is to search the record for some affirmative evidence to support the local board's overt or implicit finding that a registrant has not painted a complete or accurate picture of his activities. . . . If the facts are disputed

the board bears the ultimate responsibility for resolving the conflict—the courts will not interfere. Nor will the courts apply the test of 'substantial evidence'. However, the courts may properly insist that there be some proof that is incompatible with the registrant's proof of exemption."

". . . when the uncontroverted evidence supporting the registrant's claim places him prima facie within the statutory exemption, dismissal of the claim solely on the basis of suspicion and speculation is both contrary to the spirit of the Act and foreign to our concepts of justice."

The dissenting opinion of Mr. Justice Jackson put the proposition more bluntly (74 S. Ct. 152, 159):

". . . Under today's decision, it is not sufficient that the board disbelieve the registrant. The board must find and record affirmative evidence that he has misrepresented his case. . . ."

In the present case, petitioner made out a prima facie case for a I-O classification when he filed with the local board his Form 150 in which he claimed conscientious objection to war in any form based upon religious training and belief.

The government's case (the appellant's Selective Service file placed in evidence as the government's exhibit) is totally barren of any evidence whatsoever tending to cast the slightest doubt on appellant's sincerity.

Petitioner claimed membership in the Watchtower Society as one of Jehovah's witnesses.

The Court may take judicial notice of the fact that although Jehovah's witnesses usually have trouble later in the administrative procedure, because of their claim to be ministers, they almost never have trouble getting a I-O classification. There is not a single shred of evidence in

the record to cast doubt on appellant's bona fide membership in Jehovah's witnesses and belief in their creed.

Thus the Selective Service System's denial of I-O classification to petitioner was without basis in fact and upholding that arbitrary classification would be contrary to the rule of law as set forth in *Dickinson*, or at least, its spirit.

(2) The Constitutional Point

" 'Due process' is a procedure which hears before it condemns, proceeds upon inquiry, and renders judgment only after trial [or fair hearing]". *Sexton* v. *Barry*, 223 F. 2d 220, certiorari denied 77 S. Ct. 94, 352 U. S. 870, 1 L. ed. 2d 76. Constitutional guaranty of "due process of law" requires observance of those general rules established in our system of jurisprudence for the security of private rights in any proceeding which may result in depriving a person of life, liberty or property. U.S.C.A., Const. Amend. 5; *U. S.* v. *Kuwabara*, 56 F. Supp. 716. The absolute fundamentals of "due process of law" are jurisdiction, adequate notice, and a fair hearing. U.S.C.A., Const. Amend. 5; *U. S.* v. *Parcels of Land in Prince George's County, Md.*, 40 F. Supp. 436. In regard to "due process," it should be pointed out that the constitutional provision for security of person and property should be liberally construed. U.S.C.A., Const. Amends. 4, 5; *U. S.* v. *Wheeler*, 149 F. Supp. 445.

With the above in mind, petitioner contends that he was deprived of that guaranty of "due process of law" insured to him by the Fifth Amendment and the general rules of our system of jurisprudence.

The Court of Appeal's decision rested entirely on the fact that the Department of Justice Hearing Officer concluded that petitioner "did not appear to have made a

serious study of his religion, and that his knowledge of it was superficial. Appellant devoted less than 10 hours per month to his religious activities after July 1965." (slip opinion].

Petitioner submits that the standards used by the Department of Justice Hearing Officer for his Report and Recommendation and relied upon by the Selective Service System and the Court of Appeals, were artificial, fictitious, unlawful standards not authorized by the Act and the Selective Service System Regulations, and deprived petitioner of guaranteed constitutional rights.

What credentials has this Hearing Officer to be considered as one familiar with religion, or the religion of this appellant, or with the standards required for conscientious objection? Does appointment to the position of Hearing Officer clothe him with a presumption of such knowledge? If such a presumption exists his statement and conclusions have rebutted it.

In regard to the situation before the Court, such standards, as established by the Department of Justice Hearing Officer, are untenable, without any support in precedent, with insufficient support in logic, and a violation of due process of law.

There is nothing in the Act, the Selective Service System Regulations, or the case law, that requires a conscientious objector to (1) make "a serious study of his religion", or (2) to have more than a "superficial" knowledge of his religion, or (3) to devote more than 10 hours a month to it. The Act, the Selective Service System Regulations and the case law require sincerity. The Department of Justice Hearing Officer is not empowered to establish unlawful standards but is empowered to report on the sincerity of registrant. *Simmons* v. *United States*, 348 U.S. 397, 99 L. ed. 453, 75 S. Ct. 397 (1955).

If petitioner *had* claimed the ministry classification it then *might* be said that his failure to put in more hours or, *if true*, to have a deep knowledge of religion (to meet the draft law standards on *ministry*) was an indication of an insincere person. Since he did not claim the IV-D classification the standard used by the Hearing Officer was imported and irrelevant and the Court of Appeals erred in adopting such a standard as applicable to petitioner.

The State Director saw that Maynard was only claiming the I-O, when he wrote the local board to reconsider (Ex. 25). The Director saw this when He, on His own initiative, took an appeal for Maynard (Ex. 45).

Assuming (1) that our application of "the insolence of office" concept to this Hearing Officer's factual judgment concerning a birthright Jehovah's witness is without a reasonable basis and that, (2) in fact, petitioner was *not a serious student of his religion* and did not have a profound knowledge of it and that he was slack in his religious activities "after July 1965"; where is there support, *in law*, for the use of such a standard?

There never before has been such a standard, but now there is: *Maynard* v. *United States*, 9 Cir., ... F.2d ..... decided March 28, 1969. Nowhere else. We submit that such a standard is contrary to constitutional guarantees.

The law has not heretofore required a Selective Service System registrant to be pious, or observant of his group's standards, or those of any denomination. Such a requirement is proper in the opinion of the Court below. This is directly contrary to the 1st Amendment.

As the Court of Appeals for the Ninth Circuit pointed out in *Chernekoff* v. *United States*, (9 Cir., 1955) 219 F. 2d 721 at page 724:

"Likewise in the course of argument it was represented and unchallenged that the derogatory information in the file as to appellant's religious sincerity concerns a single conviction for drunkenness and a later one for speeding. To be a good church member does not necessarily entail being a saint. A mortal may occasionally weaken and still remain loyal to the tenets of his faith. A conscientious objector is not to be considered an outcast susceptible of being convicted of a felony by any stray scintilla of evidence, indicating sporadic deviation from the principles and approved practices of his religion. We are all children of Eve."

A man could *even* be disfellowshipped, for non-observance, and still not fall short of the draft law standard for a conscientious objector if moral turpitude or insincerity was not involved.

It is significant that petitioner has never been disfellowshipped for his "laxity". The reason for his good standing, as one of Jehovah's witnesses, is that the hierarchy of the Watchtower Society fully realizes, because their ministry is an unpaid one, that by reason of periodic need [in this case *seeking* employment] each man in their missionary membership at one time or another, slackens his zeal so that he can pay off earthly debts.

The opinion relates that an overseer in the La Sierra Unit of Jehovah's Witnesses, interviewed concerning petitioner's activities, said that he was unable to assign any reason for appellant's inactivity other than negligence on petitioner's part. The fact that this man didn't know any *other* reason casts no doubt on petitioner's testimony as to why he slackened his religious activities and, even if it was "negligence" so what? See *Chernekoff,* supra.

Also, *Parr* v. *United States,* 9 Cir., 1959, 272 F. 2d 416, 420, especially footnote 1.

Such unlawful standards cannot be used in deciding whether petitioner or any man is a conscientious objector. Such standards violate the Act, the Selective Service Regulations, and the 1st and 5th Amendments to the Constitution of the United States.

CONCLUSION

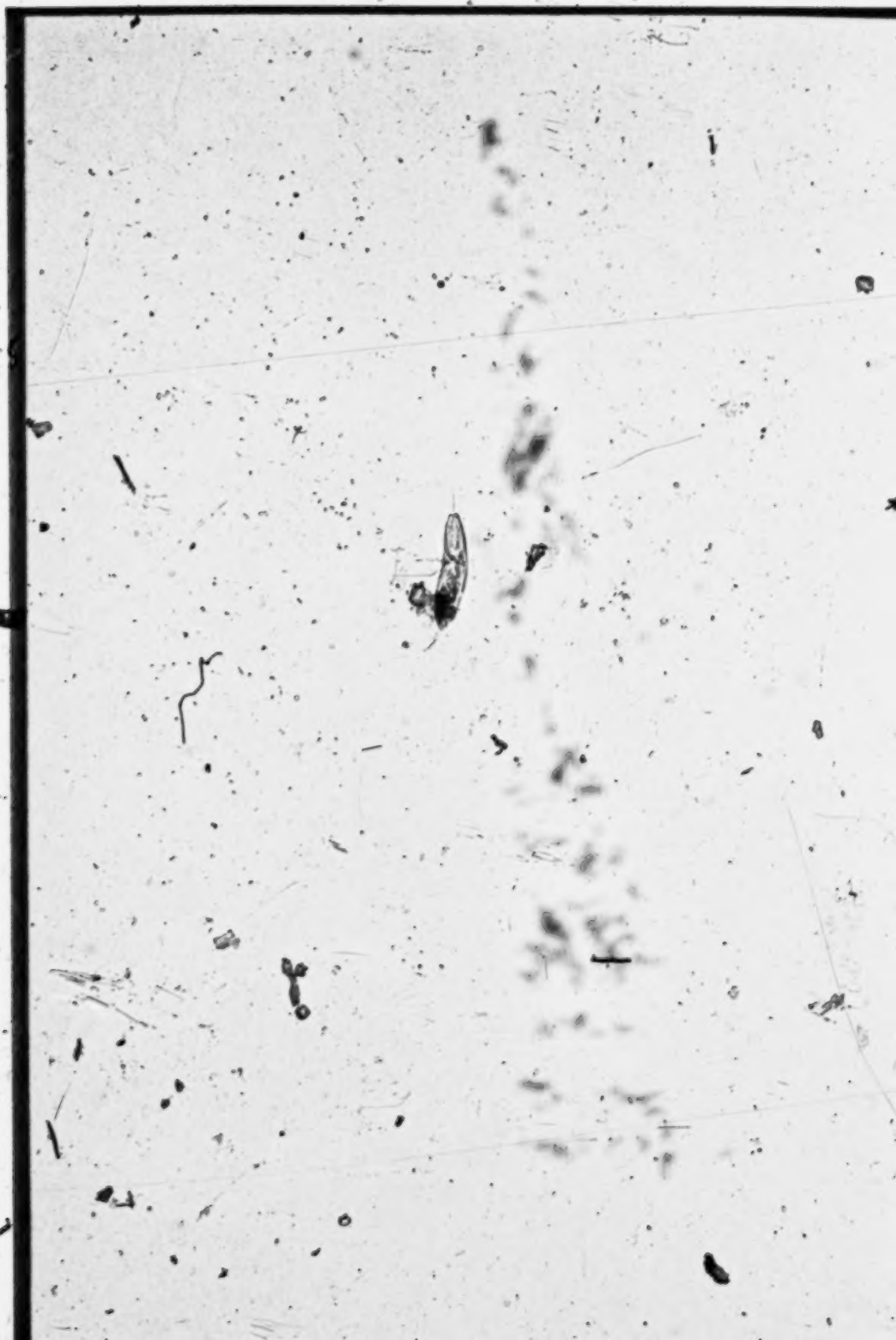
For the above given reasons certiorari should be granted and the judgment should be reversed.

Respectfully

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June 30, 1969.

APPENDIX



APPENDIX A

United States Court of Appeals

FOR THE NINTH CIRCUIT

PAUL BROWN MAYNARD,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

No. 22,887

[March 28, 1969]

Appeal from the United States District Court
for the Central District of California

Before: BARNES and CARTER, Circuit Judges, and VON DER HEYDT,* District Judge

VON DER HEYDT, District Judge:

Appellant, a Jehovah's Witness, was placed in Selective Service Class I-A by both his local Selective Service Board and an Appeal Board, despite his claim to be a conscientious objector. When called for service, he refused to be inducted. This led to his conviction under 50 U.S.C. App. §462 (Supp. III, 1968) and a sentence of three years imprisonment. He urges on appeal that there was no basis in fact for the Board's refusal to classify him as a conscientious objector, and therefore the conviction must be reversed.

The range of judicial review of the determinations of Selective Service Boards has been called "the narrowest

*The Honorable James A. von der Heydt, United States District Judge for the District of Alaska, sitting by designation.

known to the law." *Blalock* v. *United States*, 247 F.2d 615, 619 (4th Cir. 1957). The "basis in fact" which will support the Board's decisions need not even rise to the level of "substantial evidence." All that is required is that where the registrant has made out a prima facie case for exemption, there must be "some proof that is incompatible with the registrant's proof of exemption." *Dickinson* v. *United States*, 346 U.S. 389, 396 (1953).

The nature of such proof depends upon the nature of the prima facie case. In *Dickinson, supra*, the registrant claimed to be a "regular or duly ordained minister of religion", which claim he substantiated by evidence consisting of objective facts. In such cases there should be some evidence tending to refute the inference created by such facts, in order to warrant denial of the exemption.

In the instant case, as distinguished from *Dickinson*, Maynard claims to be a conscientious objector. The United States Supreme Court has stated:

> "Here the registrant cannot make out a prima facie case from objective facts alone, because the ultimate question in conscientious objector cases is the sincerity of the registrant in objecting, on religious grounds, to participation in war in any form. In these cases, objective facts are relevant only insofar as they help in determining the sincerity of the registrant in his claimed belief, purely a subjective question. In conscientious objector cases, therefore, any fact which casts doubt on the veracity of the registrant is relevant." *Witmer* v. *United States*, 348 U.S. 375, 381-82 (1955).

Since the statute exempts as conscientious objectors only those who are opposed to participation in war "by reason of religious training and belief," 50 U.S.C. App. §456(j) (Supp. III, 1968) any fact which casts doubt on the

sincerity of the registrant's religious convictions is likewise relevant.

Viewing the matter in this light, we hold there does exist a basis in fact for the Appeal Board's placement of Maynard in Class I-A. The Hearing Officer of the Department of Justice, who interviewed appellant, found that he did not appear to have made a serious study of his religion, and that his knowledge of it was superficial. Appellant devoted less than 10 hours per month to his religious activities after July 1965. He gave as his reason for this that he was required by financial necessities to devote more time to secular work. However, at the time of the hearing he had been unemployed for two or three weeks, but had not increased his religious activities. An overseer in the LaSierra Unit of Jehovah's Witnesses, interviewed concerning Maynard's activities, said that he was unable to assign any reason for appellant's inactivity other than negligence on Maynard's part. In addition, certain inconsistencies were discovered between Maynard's version of various events and those of other witnesses.

These facts, taken together, are more than sufficient to meet the minimal standard of "basis in fact."

The conviction is therefore affirmed.

APPENDIX B

United States Court of Appeals

FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Thursday,
May 1st, 1969

Before: BARNES and CARTER, Circuit Judges, and VON DER HEYDT, District Judge

Order Denying Petition for Rehearing

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of appellant filed April 9th, 1969 and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

APPENDIX C

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1968

PAUL BROWN MAYNARD,
Petitioner,

vs.

UNITED STATES.

Order Extending Time to File Petition for Writ of Certiorari

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 30, 1969.

/s/ W. O. Douglas
Associate Justice of the Supreme Court of the United States

Dated this 2nd day of June, 1969.

APPENDIX D

Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Universal Military Training and Service Act of 1951, As Amended (50 U.S.C.A. App. § 456 (j))

(j) Conscientious objectors.—Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period—equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice

for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors.